

## ZONING BOARD OF APPEALS

**Tuesday, December 16, 2008**  
**6:30 P.M. – City Council Chambers**  
**Rockford City Hall, 425 East State Street**

### Present:

**ZBA Members:** Alicia DiBenedetto  
Aaron Magdziarz  
Dan Roszkowski  
Scott Sanders  
Julio Salgado  
Craig Sockwell

### Absent:

**Staff:** Todd Cagnoni – Deputy Director, Community & Economic  
Development, Construction & Development Services  
Sandra Hawthorne – Administrative Assistant  
Jon Hollander – City Engineer, Public Works  
Chief Frank Schmitt - Fire Prevention Division  
Attorney Kerry Partridge – arrived 7:03 PM

**Others:** Reid Montgomery, Director, Economic & Community Development  
Kathy Berg, Stenographer  
Applicants and Interested Parties

The meeting started at 6:30 P.M. A **MOTION** was made by Craig Sockwell to **APPROVE** the minutes of the November 18, 2008 meeting as submitted. The Motion was **SECONDED** by Aaron Magdziarz and **CARRIED** by a vote of 6-0.

<b>043-08</b> Applicant Ward 3	<b><u>1405-1407 North Main Street</u></b> City of Rockford Department of Law <b>Revocation of Special Use Permit #102-05</b> for indoor retail liquor sales by the drink in conjunction with a full service restaurant in a C-2, Commercial Community District <b>Laid Over from August, September and October meetings</b>
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The Applicant has requested this item be Laid Over to the January 21st meeting.

A **MOTION** was made by Alicia DiBenedetto to **LAY OVER** the Revocation of Special Use Permit #102-05 for indoor retail liquor sales by the drink in conjunction with a full service restaurant in a C-2, Commercial Community District at 1405-1407 North Main Street. The Motion was **SECONDED** by Scott Sanders and **CARRIED** by a vote of 6-0

**048-08**                    **3326, 3328 & 3336 Kishwaukee Street**  
Applicant                Robert Lowe  
Ward 6                   **Modification of Special Use Permit** for an expansion of used car sales  
                             **Variation** to reduce the perimeter landscape strip from 10 feet to 7 feet in a C-3,  
                             Commercial General District  
                             **Laid Over from October meeting**

Prior to the meeting, a request was made to Lay Over this item to the January 21st meeting.

A **MOTION** was made by Alicia DiBenedetto to **LAY OVER** the Modification of Special Use Permit for an expansion of used car sales; and to **LAY OVER** the Variation to reduce the perimeter landscape strip from ten (10) feet to seven (7) feet in a C-3, Commercial General District at 3326, 3328 and 3336 Kishwaukee Street. The Motion was **SECONDED** by Scott Sanders and **CARRIED** by a vote of 6-0.

**051-08**                    **16XX, 1601, 1609, 1613, 1619, 1621 Kishwaukee Street**  
                             **646 16<sup>th</sup> Avenue**  
Applicant                Todd Kudlacik  
Ward 5                   **Zoning Map Amendment** from C-1, Limited Office, C-3 General Commercial, and R-2,  
                             Two-family Residential Districts to C-2, Commercial Community Zoning District  
                             **Laid Over from October meeting**

A request for Lay Over has been received from the applicant.

A **MOTION** was made by Alicia DiBenedetto to **LAY OVER** the Zoning Map Amendment from C-1, Limited Office, C-3, General Commercial, and R-2, Two-family Residential Districts to C-2, Commercial Community Zoning District at 16XX, 1601, 1609, 1613, 1619, 1621 Kishwaukee Street and 646 16<sup>th</sup> Avenue. The Motion was **SECONDED** by Scott Sanders and **CARRIED** by a vote of 6-0.

**054-08**                    **371 Blackhawk Park Avenue**  
Applicant                Warren Strom  
Ward 5                   **Special Use Permit** for an auto salvage or junk yard in an I-2, General Industrial Zoning  
                             District  
                             **Laid Over from November**

The subject property is located at the southeast corner of Seminary Street and Blackhawk Park Avenue and is currently vacant. David Hoffman, Warren Strom and Kevin Hoffman were present. Mr. Strom reviewed the request for Special Use Permit. He explained the Applicants also own a dismantling business located at 923 Seminary. It is their intent to use the 371 Blackhawk Park Avenue site as a storage facility for those vehicles awaiting dismantling at the 923 Seminary location. Mr. Strom explained the Applicants purchased this property a little over a year ago specifically for this purpose. There is a 100 ft easement along the east and south side of the property that was not disclosed at the time of purchase. The easement is not available for the Applicant's use, which limits the available land usage to 4.3 acres. This location will increase employees by approximately ten, and will increase sales tax and gasoline tax. Mr. Strom explained a design plan to allow for several different features of water run off into an existing storm sewer. There is a 30 foot landscaping setback to the west and along a portion of the south. Mr. Strom explained the Applicants wish to propose a wooden fence on the south, west, and north rather than Staff condition of vinyl fencing. He explained wood is a natural product and does not stand out, is \$20,000 less than vinyl, and can be easily sanded and painted in the event of graffiti. He further explained the racks shown will only be used for parts such as doors, windows, etc. and will not be higher than the 8' fence. No vehicles will be stacked. The only entrance is the one off of Blackhawk Park Avenue. The storage plan at this point is for insurance purchased vehicles only.

The proposed security gate will consist of steel framing with wood, and will be of a sliding style. Mr. Sanders asked what the 100 foot easement surface consisted of. Mr. Strom explained there was paving over part of it, as well as some structures in an area to the south, within the easement. He further explained the section of existing chain link fence will be removed. Jon Hollander from Public Works stated the City has had several discussions with the applicant regarding their proposed storm water system and is comfortable with the Applicant's plan. Alicia DiBenedetto asked Staff why they wished to limit the fencing to white vinyl. Mr. Cagnoni stated Staff felt the vinyl would be aesthetically fitting along the west property line, but is agreeable to wood fencing if the Board so chooses. The Board wished to revise condition 6 to say 8' high solid wood fence, staggered every 100 - 125 feet. Mr. Cagnoni also clarified with the Applicant that no vehicle parts would be stored on the property.

Attorney Partridge joined the meeting at this point.

Staff Recommendation was for Approval with 9 conditions. No Objectors were present.

A **MOTION** was made by Alicia DiBenedetto to **APPROVE** the Special Use Permit for an auto salvage or junk yard in an I-2, General Industrial Zoning District at 371 Blackhawk Park Avenue with amended condition 6. The Motion was **SECONDED** by Scott Sanders and **CARRIED** by a vote of 6-0.

Approval is subject to the following conditions:

1. Meeting all Building and Fire Codes.
2. Submittal of Building Permits for Staff review and approval.
3. Submittal of Engineered drawings for Staff's review and approval.
4. Submittal of detailed landscape plan to include the type of species to be planted for Staff's review and approval.
5. The site is limited to the storage of vehicles and shall not allow the dismantling of vehicles on this site.
6. The fencing along Blackhawk Park Avenue (north side), Seminary Street (west side) and the first one hundred (100) feet of the south boundary should be 8' high solid wood staggered every 100 to 125 feet as proposed by the applicant.
7. The surface has to be covered in Recycled Asphalt Product (RAP) and stone as per the final approved plan by Staff.
8. All conditions must be met prior to establishment of use.
9. That the property shall conform to State and Federal EPA Regulations.

**ZBA 054-08**  
**Findings of Fact for a Special Use permit**  
**For an Auto Salvage or Junk Yard**  
**In an I-2, General Industrial Zoning District at**  
**371 Blackhawk Park Avenue**

**Approval** of this Special Use Permit is based upon the following findings:

1. The establishment, maintenance or operation of the Special Use Permit will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare of the community.
2. The Special Use Permit will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood.
3. The establishment of the special use will not impede the normal or orderly development and improvement of the surrounding property for uses permitted in the district.

4. Adequate utilities, access roads, drainage and/or necessary facilities have been provided.
5. Adequate measures have been or will be taken to provide ingress or egress so designed as to minimize traffic congestion in the public streets.
6. The special use shall, in all other respects, conform to the applicable regulations of the I-2 Zoning District in which it is located.

**060-08**

Applicant

Ward 1

**1589 Shiloh Road**

David Footerman

**Variation** to increase the maximum allowable height from 18 feet to 29 feet for a tree house in an R-1, single-family Residential District

The subject property is located on the east side of Shiloh Road and 1,500 feet north of Guilford Road and is a single-family residence on a slightly larger than one acre lot. David Footerman, Applicant, reviewed his request for Variation. He explained he was looking for a way to stabilize two 90 foot high cherry trees to prevent them from falling. He felt cables or bracing would not allow for swaying of the trees and would not be aesthetically pleasing. He chose to build a tree house that would stabilize the trees and also allow for movement as well as create an area for his children to enjoy. Mr. Footerman stated the tree house would not be useful in stabilizing the trees if it were only 18' high as limited by ordinance. Each of the six piers on the main section would support about 4000 pounds of weight. In the height of the summer the structure cannot be seen. Mr. Footerman stated the tree house is located about 15 feet in from a wooded lot that is part of the Applicant's property, which also backs up to the adjacent property owner's wooded lot.

Mr. Sockwell asked the Applicant to explain the main purpose of the tree house. Mr. Footerman stated it started out as a way to preserve the trees, but has turned into a recreational structure for his children. It will also include bunk beds, electricity, drinking water, and a sink.

A letter of support was received from Steven Larsen and Martha Bein, 1625 Shiloh Road, adjacent property owners. Their letter stated "The planning and construction of the tree house was done with the highest standards of care, both aesthetically and in craftsmanship" and is a welcome asset to the neighborhood.

Staff Recommendation was for Approval with 2 conditions. One letter of Objection was received and Objectors were present.

Ms. C. Stevens, 1601 Shiloh Road, adjacent property owner, expressed concerns that the height of this structure "would detract from the integrity of the neighborhood as well as the privacy that adjoining properties have had for years".

Paul and Judith Letourneau, 1656 Viking Court, were present as Objectors. Mr. Letourneau explained his property is directly north of the Applicant's and they share a common lot line. He asked the Board if Mr. Footerman would need to come before the Board had he received a building permit. Mr. Cagnoni explained that Mr. Footerman has applied for this Variation because he wished to increase the height of this structure beyond the Ordinance allowance. Mr. Letourneau stated he felt it unfair that this structure is already built and it would be difficult to ask the Applicant to now tear it down. He clarified that most of his objections are that of cosmetic. He feels the building "looms" from his property and is concerned about resale value. He also has concerns with the large blue and brown tarps in place, under which is stored wood. He is concerned that since the ground under the tree house is dirt that the Applicant will use this for storage or parking. He asked if he had any rights at this hearing. Mr. Cagnoni explained he has the right to ask questions, to raise objections, and to ask the Board to consider placing conditions of approval on the application, as well as clarification of this application. Mr. Letourneau then asked what the intent

was of the Codes & Regulations and City Council meetings in regards to this application. Mr. Cagnoni explained the process of voting on this item. Mr. Letourneau asked if the Board could force the Applicant to plant trees on his (Mr. Letourneau's) property. Attorney Partridge stated they could not – that would be a private issue between the Applicant and himself. Mrs. Letourneau stated they would like the Applicant to plant 3 Canadian hemlocks, 4 to 6 feet tall, 3. She stated the tree house is taller than their two story house. She also clarified that they are not asking Mr. Footerman to tear down the structure, but to recognize there are drawbacks from their point of view.

Mark Footerman, age 15 and Miles Footerman, age 11 were also present. They are the sons of the Applicant. Mark explained that many neighbors and friends have come to look at the tree house and they have all taken joy in it. He expressed his desire that it not be removed. Regarding the trap door on top of the structure, Mark stated it would be very upsetting if that were torn down. They would like to have the opportunity to mount a telescope there to view the stars. He further clarified that the storage on ground under the structure will be removed, but it is not practical at this time to continue building on the tree house. All ground storage will be used for the tree house and grass will be planted.

In rebuttal, Mr. Footerman, explained he respects the views of his neighborhood. He stated he did go through the City Ordinance prior to building this structure but did not find a reference to the 18' height. He explained he did not intentionally go against city Ordinance and was not aware he could apply for a Variation. Regarding the request for evergreens, Mr. Footerman stated there are no evergreens in this forested area. He expressed that he does not understand why the neighbor did not ask him to put the hemlocks on his lot instead of theirs if the issue was to conceal the bottom of the structure. Hemlocks bear fruit which is toxic and not certain he would want them around a lot of children. A 6' hemlock would take about 20 years to obscure the tree house and Mr. Footerman felt this was not a feasible solution. The preservation of the cherry trees is a genuine issue. If they come down, they will also take out the decorative fence on a neighboring land, as well as create a huge gap in the woods. Mr. Footerman expressed concerned over the safety of other property and persons should action not be taken to preserve these trees. The Applicant further stated the wood under the structure is the remainder of the wood from the structure. When weather allows, the intent is to clean the area up.

Mr. Sockwell asked Staff if the neighbor could plant trees on his land. Prior to staff answering, Mr. Sanders wished to clarify the Variation is strictly for the height of the structure and did not include landscaping features. Mr. Cagnoni agreed with this explanation. He further clarified if the structure was a home it could be 30 feet high.

Mr. Sockwell felt this is an extremely attractive structure and does not find it any more objectionable than the view of all the homes in the winter. He does not feel the planting of trees is part of this application and feels this is something between the neighbors. Mr. Roszkowski felt the same but felt conditions could be added to remove the tarps or prevent storage under the structure.

Chief Frank Schmitt, Fire Department, stated he would like to add a condition that there be an operating smoke alarm as well as a carbon monoxide detector installed at all times, and a minimum of 5 pound rated fire extinguisher.

A **MOTION** was made by Scott Sanders to **APPROVE** the Variation to increase the maximum allowable height from 18 feet to 29 feet for a tree house in an R-1, Single-Family Residential District at 1589 Shiloh Road with added conditions 3 and 4. The Motion was **SECONDED** by Julio Salgado and **CARRIED** by a vote of 6-0.

Approval is subject to the following conditions:

1. Meeting any applicable building codes and obtaining the appropriate permits.
2. That the accessory structure (tree house) shall not be intended for habitation or business use.
3. There shall be no storage of materials beneath the treehouse itself.
4. The structure shall contain operating smoke and carbon dioxide detectors and a minimum of a 5 pound rated fire extinguisher.

**060-08**  
**Findings of Fact for a Variation**  
**To Increase the Maximum Allowable Height**  
**From 18 Feet to 29 Feet for a Tree House**  
**In an R-1, Single-Family Residential District at**  
**1589 Shiloh Road**

**Approval** of this Variation is based upon the following findings:

1. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.
2. The conditions upon which a petition for this Variation are based are unique to the property for which the Variation is sought and are not applicable, generally, to other property within the same zoning classification.
3. The purpose of this Variation is not based exclusively upon a desire to increase the value or income potential of the property.
4. The alleged difficulty or hardship is caused by this Ordinance and has not been created by any persons presently having an interest in the property or by any predecessor in title.
5. The granting of this Variation will not be detrimental to the public welfare, or injurious to other property or improvements in the neighborhood in which the property is located.
6. The proposed Variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair the property values within the neighborhood.
7. The proposed Variation does comply with the spirit and intent of restrictions imposed by this Ordinance.

**061-08**                      **1515 Broadway**  
Applicant                  Octavio Cortes / Jose Paramo  
Ward 11                    **Special Use Permit** for an auto detailing shop in an R-2, Two-family Zoning District

The subject property is located 160 feet south of Broadway and Arbor Court and is currently a vacant building. Uses on this property in the past have been an office building with car wash rack, car lot, and most recently an auto detailing and spot painting shop. The previous Special Use Permit for auto detailing and spot painting uses has lapsed due to the use being discontinued for 24 consecutive months. Octavio Cortes and Jose Paramo, Applicants, reviewed the request for Special Use Permit. Mr. Cortes stated 8 parking spaces are available. He stated it is not his intention to have outside parking or storage. Mr. Cortes offered to landscape the area beside the office, and stated he is aware that one of the conditions of approval is to work with Staff regarding landscaping.

Staff Recommendation was for Approval with 5 conditions. No Objectors were present.

A **MOTION** was made by Aaron Magdziarz to **APPROVE** the Special Use Permit for an auto detailing shop in an R-2, Two-family Zoning District at 1515 Broadway. The Motion was **SECONDED** by Julio Salgado and **CARRIED** by a vote of 6-0.

Approval is subject to the following conditions:

1. Meet all Building and Fire Codes.
2. There shall be no overnight outdoor storage of vehicles on the property.
3. No outside storage of any kind.
4. Submittal of landscape plan to include the type of species to be planted for Staff's review and approval.
5. All conditions must be met prior to establishment of use.

**ZBA 061-08**  
**Findings of Fact for a Special Use permit**  
**For an Auto Detailing Shop**  
**In an R-2, Two-Family District at**  
**1515 Broadway**

**Approval** of this Special Use Permit is based upon the following findings:

1. The establishment, maintenance or operation of the Special Use Permit will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare of the community.
2. The Special Use Permit will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood.
3. The establishment of the special use will not impede the normal or orderly development and improvement of the surrounding property for uses permitted in the district.
4. Adequate utilities, access roads, drainage and/or necessary facilities have been provided.
5. Adequate measures have been or will be taken to provide ingress or egress so designed as to minimize traffic congestion in the public streets.
6. The special use shall, in all other respects, conform to the applicable regulations of the R-2 Zoning District in which it is located.

<b>062-08</b> Applicant Ward 3	<b><u>1234 National Avenue</u></b> David Hagney <b>Variation</b> to reduce the side yard setback from the required six feet to three feet for a two-car garage addition in an R-1, Single-family Residential District
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The subject property is located on the north side of National Avenue, approximately 270 feet east of Guard Street and is a single-family residence. David Hagney, Architect, representing the owners of the property, reviewed the request for Variation. The Applicants currently have a 15' x 20' carport which they wish to remove and construct a two-car garage. They purchased additional land from the neighbor to the north for this purpose, but because of the layout of the lot will still require the Variation. Mr. Hagney explained that it is the Applicant's intent to landscape the remaining 3 feet of land.

Staff Recommendation was for Approval with 1 condition. No Objectors were present.

A **MOTION** was made by Craig Sockwell to **APPROVE** the Variation to reduce the side yard setback from the required six feet to three feet for a two-car garage addition in an R-1, Single-family Residential District at 1234 National Avenue. The Motion was **SECONDED** by Scott Sanders and **CARRIED** by a vote of 6-0.

Approval is subject to the following condition:

1. Construction of the proposed addition must be compatible with the existing architectural style of the home.

**ZBA 062-08**  
**Findings of Fact for a Variation**  
**To Reduce the Side yard Setback from the Required Six Feet to Three Feet**  
**for a Two-Car Garage Addition**  
**In an R-1, Single-Family Residential District at**  
**1234 National Avenue**

**Approval** of this Variation is based upon the following findings:

1. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.
2. The conditions upon which a petition for this Variation are based are unique to the property for which the Variation is sought and are not applicable, generally, to other property within the same zoning classification.
3. The purpose of this Variation is not based exclusively upon a desire to increase the value or income potential of the property.
4. The alleged difficulty or hardship is caused by this Ordinance and has not been created by any persons presently having an interest in the property or by any predecessor in title.
5. The granting of this Variation will not be detrimental to the public welfare, or injurious to other property or improvements in the neighborhood in which the property is located.
6. The proposed Variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair the property values within the neighborhood.
7. The proposed Variation does comply with the spirit and intent of restrictions imposed by this Ordinance.

With no further business to report, the meeting was adjourned at 8:30 P.M.

Respectfully submitted,  
Sandra A. Hawthorne, Administrative Assistant  
Zoning Board of Appeals